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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,419	12/08/2004	Patrice Martincz	41052/309048	2579
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JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER MATTER, KRISTEN CLARETTE	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,419	<b>Applicant(s)</b> MARTINEZ ET AL.	
	<b>Examiner</b> Kristen C. Matter	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance: See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/14/2005</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

The drawings are objected to because it is hard to see the details of the claimed structures because of the small size/crowding of the drawings (see Figures 7-12) or dark shading (see Figures 13 and 15).

In addition, the wings (52) shown in Figure 4 do not appear to correspond to the description of the wings in the written description, making the structure of the wings somewhat unclear. The collar (207) shown in Figure 7 appears to point to an attachment means for connecting the strap to the mask, not a structure corresponding to a location of a guidance member on the shield (which is also not shown in the drawings).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 1, 239, and 250.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the locking indicator must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino

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acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

In the instant application, applicant is strongly encouraged to add appropriate headers.

In addition, the spacing of the lines of the specification is such as to make reading difficult. New application papers with lines 1½ or double spaced on good quality paper are required.

### ***Claim Objections***

Claims 25-27 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 25-27 are dependent on claim 21, a cancelled claim, making it impossible to determine the metes and bounds of the instant claim. Accordingly, claims 25-27 have not been further treated on the merits.

Claim 32 is objected to because of the following informalities: on line 2, "the interior" should be changed to --an interior-- since an interior of the mask has not been previously introduced.

Claim 37 is objected to because of the following informalities: on line 2, "the level" should be changed to --a level-- since a level of the places of insertion has not been previously introduced.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 37 and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Examiner is unsure how the collars of the instant invention work to facilitate insertion of the guidance members under the straps because the structure of the collar is never discussed or apparently shown in the drawings.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 17-20 and 21-23 recite the same limitation involving guidance members on the shield just with the words somewhat rearranged.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 28 positively claims a “user’s nose bridge” on line 3 and a “user’s face” on line 4. Parts of the human body are not patentable. Examiner suggests adding “adapted to” language to the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22, 23, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubruille et al. (US 5,630,412).

Regarding claim 22, Dubruille et al. discloses a breathing mask connected to a breathing-gas source (column 2, lines 42-50) adapted to be applied over a bottom part of a user’s face, an eye protective shield (22), a first lock element (44, 46, 56) located on said mask and a second lock element (60) located on said shield adapted to cooperate with each other to secure the shield to the mask by a movement having a downward component with respect to the user’s face.

Regarding claim 23, the second lock element (60) can be considered a nipple extending in an oblique direction with a downwardly directed component (see figure 3).

Regarding claim 28, as best understood by the examiner, Dubruille et al. discloses first lock element has wings running from a high end close to said nipple and a low end distant from said nipple (see Figures 3, 5, and 7 where slideway (44) appears to extend beyond the end of the nipple) and becoming more distant from a median plane of a user's face (see Figure 4 when looking at a cross section of the slideway) in order to help guide the positioning of the shield onto the mask. The extended sides of the slideway (44) are being considered the wings.

Regarding claim 29, the buttons (48, 58, 64, or 66) can be considered a locking indicator to block movement of the first and second lock elements in an active position for locking the lock elements only when the mask and shield are secured (i.e., button 66 appears to "pop up" when bar (60) is slide into the slideway -- see Figure 7).

Regarding claim 30, the first and second lock elements allow a movement (i.e., sliding) of said shield with respect to said mask.

Regarding claims 32 and 33, either the sides of the slideway or the bottom of the slideway can be considered a locking ramp adapted to guide the shield toward a locked position on said mask. The bottom of the ramp is oriented with a component that is downward toward an interior of said mask (see figure 3).

Regarding claim 34, Dubruille et al. discloses a spring (74) that would bring (or at a minimum hold) the shield towards the user's face when secured to the mask.

Regarding claims 35 and 36, Dubruille et al. discloses a harness fitted with straps (18) to bring the shield towards a user's face and two guidance members (sides of mask (22) where



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straps lie in Figure 1) to become inserted under a strap when the shield is attached to the mask and to cause the straps to rise over the sides of the shield.

Regarding claim 37, as best understood by the examiner, the reinforcement member seen in Figure. 1 where the two straps (18) are attached to each other on the side of the mask and towards the front of the user's face can be considered a collar located at a level of the places of insertion of said guidance members under the straps.

Regarding claim 38, the locking ramp discussed above with respect to claims 32 and 33 can be considered the guidance ramp.

Regarding claim 39, see rejection above with respect to claim 37.

Regarding claim 40, the sliding is considered a movement of said shield with respect to said mask to favor the application of said shield over a user's face.

Claims 22, 23, 24, 30, 31, 32, 33, 35, 36, 37, 38, 39 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Sword et al. (US 6,401,716).

Regarding claim 22, Sword et al. discloses head protective equipment comprising a breathing mask (22) connectable to a breathing-gas source (column 2, lines 48-50) and adapted to be applied over the bottom of a user's face, an eye protective shield (24), first lock element (72) located on said mask and a second lock element (62, 80) located on said shield adapted to engage and interlock with each other upon a movement having a downward component with respect to said user's face.

Regarding claim 23, the flange (80) of the second lock element can be considered a nipple extending in an oblique direction and comprising a downwardly directed component

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depending on the orientation of the shield with respect to the mask (i.e., see Figure 7 if the shield is tilted further towards user's face the nipple would be extending downwardly).

Regarding claim 24, the groove (74) where the nipple is placed to connect the mask to the shield can be considered a substantially conical cavity (at least in cross-section) that narrows toward said first lock element (see Figure 7 where the cross-section of the cavity tapers in towards reference character 74) to help guide the second lock element into the first lock element.

Regarding claim 30, the lock elements allow a movement of said shield with respect to said mask to favor the application of the shield over a user's face (see Figures 5 and 7).

Regarding claim 31, the flange (80) and lip of flap (71) can be considered links and the lock elements (62, 72) are moveable with respect to each other about a horizontal axis (see Figure 7). Note that the term "links" provides no real structural limitation because there is no description as to how these links operate together nor to how the horizontal axis is defined.

Regarding claims 32 and 33, the ramp (26) up to the button (84) seen in Figure 7 can be considered a locking ramp to guide the shield that is oriented with a component (80) that is downward and towards an interior of the mask

Regarding claims 35 and 36, Sword et al. discloses a harness with straps (44) and guidance members (110 or contour of shield) to become inserted under the straps and causing the straps to rise over the sides of the shield when putting the shield onto position on the mask.

Regarding claim 37, as best understood by the examiner, the swivel (46) can be considered a collar at a level of the places of insertion of said guidance members. Please note that the term "level of places of insertion" does not add any real structural limitation because the level could be defined by infinite orientations of the device.

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Regarding claim 38, the locking ramp discussed above with respect to claims 32 and 33 can be considered the guidance ramp.

Regarding claim 39, see rejection above with respect to claim 37.

Regarding claim 40, the sliding is considered a movement of said shield with respect to said mask to favor the application of said shield over a user's face.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dubruille et al. Dubruille et al. discloses a trapezoidal cavity but is silent as to a conical cavity. However, absent a critical teaching and/or showing of unexpected results from having a conical cavity, it appears to be an obvious design consideration to have the slideway be a either trapezoidal or conical shape so long as the slide (60) was able to slide into and be locked in slideway (62). Furthermore, it appears as though the device disclosed by Dubruille et al. would perform equally well with a conically shaped slideway. See also *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sword et al. in view of Disney (US 4,774,939). Sword et al. does not disclose a support for attaching the

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shield to when not attached to the mask. Disney discloses a storage means for masks (114) and eye shields (150) comprising a support (120) that has a lock element (156) for connecting with a lock element on the shield (Figure 5) that interlock by bringing the shield closer to the support with a movement having a downward component in order to secure the mask to the support even when the shield is not attached to the mask (mask is attached separately by peg 152). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a storage system and support as taught by Disney with the device of Sword et al. for allowing the shield to be locked to a support separately of the mask in case both were not needed for use at the same time (column 4, lines 15-35).

### *Conclusion*


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McDonald et al. is cited to show a mask storage means, Forbes et al. is cited to show another quick-donning mask/goggle set, and Geissler is cited to show another mask/goggle locking mechanism.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kristen C. Matter  
Examiner  
Art Unit 3771

  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

10/29/07